

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY HARP,

Plaintiff,

Case No. 21-12446

v.

Honorable Nancy G. Edmunds

KRISTINE AUSTIN, *et al.*,

Defendants.

_____ /

**ORDER ACCEPTING AND ADOPTING THE MAGISTRATE JUDGE'S
JULY 19, 2023 REPORT AND RECOMMENDATION [40]**

This is a pro se prisoner civil rights lawsuit filed under 42 U.S.C. § 1983 by Plaintiff Anthony Harp alleging violations of the Eighth Amendment, the Americans with Disabilities Act ("ADA"), and the Rehabilitation Act. (ECF No. 1.) The case has been referred to Magistrate Judge Kimberly G. Altman for all pre-trial matters. (ECF No. 33.) Several of the named defendants have already been dismissed from this action, but Defendants Kristine Austin and Corizon Health, Inc. remain. (See ECF No. 27.) Before the Court is the Magistrate Judge's report and recommendation to deny in part and grant in part Defendants' motion for summary judgment. (ECF No. 40.) Defendant Austin has filed two objections to the report. (ECF No. 41.) For the reasons below, the Court **OVERRULES** Defendant Austin's objections and **ACCEPTS AND ADOPTS** the Magistrate Judge's report and recommendation.

I. Standard of Review

Under Federal Rule of Civil Procedure 72(b)(3), "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive

further evidence; or return the matter to the magistrate judge with instructions.” *See also* 28 U.S.C. § 636(b)(1).

II. Analysis

The Magistrate Judge recommends that Defendant Corizon’s motion for summary judgment be denied without prejudice due to a bankruptcy stay currently in place. She further recommends that Defendant Austin’s motion be denied with regard to Plaintiff’s deliberate indifference claim but granted with regard to Plaintiff’s ADA and Rehabilitation Act claims. No party has objected to the Magistrate Judge’s conclusions regarding the denial of Defendant Corizon’s motion or the partial grant of Defendant Austin’s motion. “[T]he failure to object to the magistrate judge’s report[] releases the Court from its duty to independently review the matter.” *See Hall v. Rawal*, No. 09-10933, 2012 U.S. Dist. LEXIS 120541, at *2 (E.D. Mich. Aug. 24, 2012) (citing *Thomas v. Arn*, 474 U.S. 140, 149 (1985)). The Court nevertheless agrees with the Magistrate Judge and accepts and adopts these recommendations.

With regard to Plaintiff’s deliberate indifference claim against Defendant Austin, the Magistrate Judge found that the evidence, including the medical records and Plaintiff’s verified complaint, shows Plaintiff received delayed treatment for a serious medical condition affecting his right eye that led to pain and vision loss. Defendant Austin has filed two objections to this conclusion. She argues that the Magistrate Judge improperly found genuine issues of material fact as to both the objective and subjective prongs of Plaintiff’s claim. More specifically, she argues that the evidence does not show Plaintiff had a serious medical need prior to March 18, 2021 or that she was aware of any such need

prior to that date.¹ The Court has reviewed the record, however, and agrees with the Magistrate Judge that there are genuine questions of material fact as to these issues. Defendant Austin herself acknowledges that the medical records show Plaintiff raised an issue regarding his “visual aid” in January 2021 and sought help for a “number of chronic condition[s]” including his “visual problem” in February 2021. (See ECF No. 31-1, PageID.217-20.) In sum, Defendant Austin’s objections are overruled, and the Court denies her motion with regard to Plaintiff’s deliberate indifference claim.

III. Conclusion

For the foregoing reasons, the Court OVERRULES Defendant Austin’s objections and ACCEPTS AND ADOPTS the Magistrate Judge’s report and recommendation (ECF No. 40). Accordingly, Defendants’ motion for summary judgment (ECF No. 31) is DENIED WITHOUT PREJUDICE as to Corizon and DENIED IN PART and GRANTED IN PART as to Austin.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: August 28, 2023

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 28, 2023, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager

¹ Defendant Austin asserts in her objections that Plaintiff did not allege deliberate indifference to his March 18, 2021 medical condition, but the Court does not read the complaint so narrowly. (See ECF No. 40, PageID.388-91 (summarizing allegations in Plaintiff’s verified complaint).)